



Review Report under the *Government Information (Public Access) Act 2009*

Applicant: Mr Terry Minahan
Respondent: Port Macquarie Hastings Council
Report date: 4 November 2013
IPC reference: IPC12/R000199
Catchwords: Government information – searches – information not held

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Summary

1. Mr Minahan applied to Port Macquarie Hastings Council (**Council**) under the *Government Information (Public Access) Act 2009 (GIPA Act)* for access to information.
2. Council decided to provide access to the information it located in response to the application, with the exception of personal details of individuals and itemised costings for construction. Access was provided by inspection at Council's offices.
3. Mr Minahan submits that the information provided by Council does not include all of the information that he asked for.
4. I am not satisfied that Council responded to each item of Mr Minahan's access application. For this reason, I recommend under section 93 of the GIPA Act that Council reconsider its decision within 15 days of the date of this report (subject to any available extensions under the GIPA Act).

Background

5. On 7 November 2012, Mr Minahan applied under the GIPA Act for access to the following information:
 - a. Applications to State and Federal Governments for Hibbard Sports Stadium Expansion and PCYC inclusion, respectively
 - b. Grant provisions received from State and Federal Governments for Stadium/PCYC Project(s)
 - c. Community consultation and construction timeline planning for the Hibbard Stadium and PCYC Project.
6. In its decision issued on 3 December 2012, Council decided to provide access to the information it identified by arranging two appointments for Mr Minahan to inspect the documents. The appointments were scheduled for 9am and 1pm on 5 December 2012. Some information was redacted from the documents that Mr Minahan was given access to. The redacted information was described as:
 - a. personal details of individuals; and
 - b. itemised costings for construction.
7. Mr Minahan does not press for access to the redacted information. He seeks a review because he believes that Council holds additional information within the scope of his access application that was not made available for inspection.

Searches for information

8. Section 53 of the GIPA Act sets out the requirement to conduct searches:

53 Searches for information held by agency

(1) The obligation of an agency to provide access to government information in response to an access application is limited to information held by the agency when the application is received.

(2) An agency must undertake such reasonable searches as may be necessary to find any of the government information applied for that was held by the agency when the application was received. The agency's searches

must be conducted using the most efficient means reasonably available to the agency.

(3) The obligation of an agency to undertake reasonable searches extends to searches using any resources reasonably available to the agency including resources that facilitate the retrieval of information stored electronically.

(4) An agency is not required to search for information in records held by the agency in an electronic backup system unless a record containing the information has been lost to the agency as a result of having been destroyed, transferred, or otherwise dealt with, in contravention of the State Records Act 1998 or contrary to the agency's established record management procedures.

(5) An agency is not required to undertake any search for information that would require an unreasonable and substantial diversion of the agency's resources.

9. The expression 'government information' is defined in section 4 of the GIPA Act as 'information contained in a record held by an agency.'
10. Before deciding that it does not hold information, an agency must comply with the requirements of section 53(2) of the Act. The requirements are:
 - a. undertake such reasonable searches as necessary to locate the information requested; and
 - b. use the most efficient means reasonably available to the agency.
11. In *Smith v Commissioner of Police [2012] NSWADT 85*, Judicial Member Isenberg said at paragraph 27:

In making a decision as to the sufficiency of an agency's search for documents which an applicant claims to exist, there are two questions:

 - (a) are there reasonable grounds to believe that the requested documents exist and are the documents of the agency; and if so,*
 - (b) have the search efforts made by the agency to locate such documents have been reasonable in all the circumstances of a particular case.*
12. When considering whether there are reasonable grounds to believe that information exists and whether searches to locate information were reasonable, the facts, circumstances and context of the application is relevant.
13. The GIPA Act does not require an agency to include details of its searches in a notice of decision. However, it is good practice for written decisions to clearly explain what the search processes were, what was found, an explanation if no records were found, what was released and what was held back. Details of searches may include where and how the agency searched, a list of any records found – and if appropriate a reference to the business centre holding the records, the key words used to search digital records (including alternative spellings used) and a description of the paper records that were searched.

Council's searches and the information provided

14. In the course of this review, Council informed us that its searches included:

Searching our electronic document management systems, being a DomDoc system, TRIM system and other computer network storage locations.

The search also involved obtaining information from officers directly involved in the sport stadium expansion project, we do this in an attempt to catch any information that has not yet been recorded in our electronic document management system.

15. Information provided to the IPC by Mr Minahan indicates that some of the information he expected to be provided with includes information from the PCYC approving / acknowledging “the \$2.5m deal,” information from the PCYC requiring actions by Council, agreements or MOUs between PMHC and PCYC, additional plans for the stadium expansion, social impact statement, information confirming “\$2.8m for the Stadium... \$2.5m for the PCYC component... conditions for either the State or Federal Government for the combined \$5.3 grants... a project control group managing community participation.”
16. Mr Minahan informed us that he also expected to see notes of meetings, approval changes, requests from State Government, minutes of meetings, negotiations about terms and conditions, information from the Federal Document and other documents. In his view, the lack of information provided evidences delay and stalling tactics by Council.
17. I am not persuaded that all of the information that Mr Minahan believes is missing falls within the scope of his access application. Council is only required to search for and consider the information captured by the terms of Mr Minahan’s access application.
18. The information provided to Mr Minahan includes:
 - a. correspondence from Council to the PCYC State Office attaching an expression of interest from Council regarding funding and re establishment of a PCYC in the Port Macquarie Hastings Local Government Area;
 - b. correspondence from Council to the PCYC Chief Executive Officer with further information to support Council’s grant application for a PCYC venue. Relevantly, this correspondence refers to:
 - i. Council’s request for a \$250,000 grant to refurbish a facility to allow for a PCYC to be established at the Wauchope Indoor Stadium;
 - ii. Council’s receipt of a \$2.8M Community Infrastructure Grant from the Federal Government to allow for additional indoor courts at a Port Macquarie Regional Stadium and associated infrastructure;
 - iii. Council’s request for a further \$2.5M grant to enable further development of the Regional Stadium
 - c. Council’s application form for the regional and local community infrastructure program – strategic projects (RLCIP-SP) for the expansion of Port Macquarie Indoor Sports Stadium seeking funding from the RLCIP-SP program;
 - d. Correspondence from the Regional and Local Community Infrastructure Program Strategic Projects from the Australian Government Department of Infrastructure, Transport, Regional Development and Local Government to Council confirming receipt of the application “under round two of the Regional and Local Community Infrastructure Program – Strategic Projects for the Expansion of Port Macquarie Indoor Sports Stadium Project.”

- e. Media release by Council dated 8 October 2012 and titled “Have your say – concept plan for Port Macquarie Indoor Sports Stadium”
- f. A public notice with text of advertisement titled “Community Forum – Proposed Expansion to Indoor Sports Stadium – Port Macquarie”
- g. Two documents titled “Invitation” regarding a community forum on 11 October 2012 about the Port Macquarie Indoor Sports Stadium
- h. Port Macquarie Indoor Stadium Upgrade Community Participation Plan
- i. Port Macquarie Indoor Stadium Community Engagement Expansion Concept – 11 October 2012 Forum Feedback
- j. Expansion of Port Macquarie Indoor Stadium Project Plan (identified as Appendix 3)

Our view

19. I have considered whether each point of Mr Minahan’s application is satisfied and address each point below.

Point one – grant applications

20. Point one of Mr Minahan’s access application asks for:
Applications to State & Federal Governments for Hibbard Sports Stadium Expansion & PCYC inclusion, respectively
21. Council has received a \$2.5 million grant from the NSW State Government and a \$2.8 million grant from the Australian Federal Government.
22. The information provided to Mr Minahan includes the application for a grant from the Australian Federal Government. It does not, however, include an application for a State Government Grant.
23. I am not satisfied that this information was provided.

Point two – grant provisions

24. Point two of Mr Minahan’s access application asks for:
Grant provisions received from State & Federal Governments for Stadium/PCYC projects
25. The grant amounts (\$2.5 million and \$2.8 million) are publicly available. However, the documented response awarding the grants was not provided to Mr Minahan.
26. I am not satisfied that this information was provided.

Point three – community consultation and construction timeline

27. Point three of Mr Minahan’s access application asks for:
Community consultation & Construction Timeline Planning for the Hibbard Stadium & PCYC Project
28. The information provided to Mr Minahan includes a community participation plan and a project plan. However, there is no construction timeline provided.
29. I am satisfied that the community consultation plan was provided. I am not satisfied that the construction timeline was provided.

Recommendations

30. I recommend under section 93 of the GIPA Act that Council reconsider its decision within 15 days of the date of this report (subject to any available extensions under the GIPA Act). My recommendation only extends to information within the scope of Mr Minahan's access application that has not already been provided to him.
31. If the information is not held by Council, then we ask that Council explain why the information is not held, and the searches by Council to locate the information, in its notice of decision.

Review rights

32. Our reviews are not binding and are not reviewable under the GIPA Act. However a person who is dissatisfied with a reviewable decision of an agency may apply to the Administrative Decisions Tribunal (ADT) for a review of that decision.
33. If Mr Minahan is dissatisfied with our review, he may ask the ADT to review Council's decision. An application for ADT review can be made up to 20 working days from the date of this report. After this date, the ADT can only review the decision if it agrees to extend this deadline. The ADT's contact details are:

Administrative Decisions Tribunal
Level 10, 86 Goulburn Street,
Sydney, NSW, 2000

Phone: (02) 9377 5711

Facsimile: (02) 9377 5723

Website: <http://www.lawlink.nsw.gov.au/adt>

Email: ag_adt@agd.nsw.gov.au

34. If Council reconsiders its decision as a result of our recommendation then Mr Minahan will have 40 working days to seek a review of that decision at the IPC or ADT.

Closing our file

35. This file is now closed.
36. If you have any questions in relation to this report please contact the Information and Privacy Commission on 1800 472 679.